

REMARKS

The Applicant has filed this Amendment in reply to the outstanding Official Action dated January 16, 2003, and the Applicant believes the Amendment to be fully responsive to the Official Action for reasons set forth herein below.

In the Official Action, the Examiner indicated that the Abstract should conform to the proper language and format for an abstract of the disclosure, as set forth in the Official Action. The Examiner further rejected Claims 4, 6, 7 and 8 pursuant to 35 U.S.C. § 112, second paragraph for the reasons set forth in the Official Action. Lastly, the Examiner rejected Claims 1-9 pursuant to 35 U.S.C. §102(e), as allegedly anticipated by Tiedemann, Jr., *et al.* (U.S. Patent No. 5,914,950) (hereinafter "Tiedemann").

At the outset and before addressing the issues raised in the Official Action, the Applicant has cancelled the Claims 1, 4, 6, 7 and 9 without prejudice or disclaimer. The Applicant has further amended Claims 2, 3, 5 to recite that the determination of a maximum transmission rate takes account of a transmission error ratio. It is noted that Claim 8 already recites this limitation. Claims 2, 3, 5 and 8 were also amended to provide editorial corrections. Support for the newly added limitation is found in the specification on page 15, line 22 – page 16, line 1, as well as on page 21, line 18 – page 22, line 1. The Applicant has further added a new Claim 10 that also includes the determination of a maximum transmission rate that takes account of the transmission error ratio. The Applicant respectfully submits that no new subject matter has been added via the amendments to the claims.

Regarding the Abstract, the Applicant has replaced the Abstract of record with a rewritten Abstract that is in conformance with the proper language and format for the abstract, set forth in the Official Action.

Regarding the rejections of Claims 4, 6, 7 and 8 pursuant to 35 U.S.C.

§ 112, second paragraph, the Applicant has cancelled Claims 4, 6 and 7, and has amended the language "such as" in Claim 8 so as to render the claim definite. Consequently, the Applicant respectfully requests the Examiner to withdraw the rejections of Claims 1, 4, 6, 7 and 8.

In traversing the rejections of Claims 2, 3, 5 and 8 (as well as new Claim 10) pursuant to 35 U.S.C. § 102(e), the Applicant respectfully submits the primary prior art reference to Tiedemann is defective in that it fails to disclose that the determination of a maximum transmission rate takes account of a transmission error ratio. As described in the present specification (page 15, line 22 – page 16, line 1; page 21, line 18 – page 22, line 1), information on whether or not resending is required based on an error ratio and so forth after decoding is also input to the maximum rate control information determining device 204. The base station decides the maximum transmission rate by taking account of the propagation condition, the error ratio and the priority order, etc. Tiedemann is directed to a method and apparatus for reverse link rate scheduling. At Col. 8, line 66 – Col. 9, line 60 with respect to Fig. 3, Tiedemann discloses that the rate on the reverse link may be scheduled by the channel scheduler 12 by taking into account pertinent information, which may include: scheduled and unscheduled tasks; transmit power of the remote station 6; amount of data to be transmitted by the remote station 6; amount of interference for each station; priority of the remote station; and other pertinent information (See Tiedemann, Col. 9 lines 30-47). However, to the contrary of the claimed invention, Tiedemann does not disclose that the rate on the reverse link may be scheduled by taking into account the transmission error ratio. Consequently, the Applicant respectfully submits that Tiedemann fails to disclose that the determination of

a maximum transmission rate takes account of a transmission error ratio, as particularly recited in the claims.

For the foregoing reasons, the Applicant respectfully requests the Examiner to withdraw the rejections of Claims 2, 3, 5 and 8 pursuant to 35 U.S.C. § 102(e).

In sum, the Applicant believes the above-identified application is in condition for allowance and henceforth respectfully solicits such allowance. If the Examiner believes a telephone conference might expedite the allowance of the application, the Applicant respectfully request the Examiner to call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,



Paul J. Esatto, Jr.
Registration No. 30,749

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530

AGV/PJE:eg